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Addressing the Problems in American Drug Policy: A Case for the Legalization of Drugs

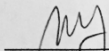
A thesis submitted in partial fulfillment of the requirement
for the degree of Bachelor of Arts in Philosophy from
The College of William and Mary

by

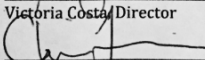
Jackson Eskay

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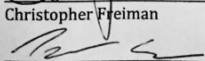
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Introduction

I specifically remember an academic debate I had my sophomore year of high school concerning the legalization of marijuana, with the question at hand being: *should we treat marijuana like we do alcohol and tobacco?* I fell on the prohibitionist side of the debate, and passionately defended that we should punish people who use, produce, or sell marijuana. My view was simple: consuming marijuana is wrong, and people should be punished for it. No other line of reasoning made much sense to me. I was completely blind to the complexity of the issue, and consequently I held a view that failed to consider the potential consequences of punishing drug users, drug producers, and drug sellers. Since then much time has passed, and I have engaged in some critical research, and been exposed to some important ideas that have drastically changed my understanding of drugs and punishment. The goal of this project is to address the many problems in American drug policy, and explain the philosophical issues inherent to punishing drug users, and in the end, make a case for the legalization of drugs. At the moment, this is a radical idea to most of the American public; however, for the philosophers and researchers in the field, drug legalization is the mainstream idea.¹ The specifics of my position will be explained in the chapters that follow. Ultimately, my goal is to change the attitudes towards drug use and punishment for those who decide to read my project.

¹ Included in this list of scholars are Douglas Husak, Michael Huemer, Arthur Benavie, Paula Mallea, Michael Tonry, and Michelle Alexander. The details of their proposals differ, but nevertheless they all propose drug legalization of some sort. Peter de Marneffe does not advocate for legalization of all drugs, but advocates for a system that imposes much less severe punishment on drug users.

Chapter 1: The War on Drugs

The status quo—that is, the existing state of affairs—is a difficult thing to change. It not only reflects, but also determines how the world operates at the present moment, so any alteration triggers an enormous ripple effect, and can inconvenience everyday life for many people. For this reason, it is natural to resist change; however, we often mistake *the existing state of affairs for the way things should be*, and so maybe this resistance to change, in some instances, is unfounded. Let us not forget, the abolition of slavery was a major inconvenience for many Americans at the time (a war was fought over the issue). Slave labor was the primary machine that supported American plantations, and when it was eliminated, it created a huge and unwanted disruption in the industry. New laborers needed to be located, and work that was once costless, now required compensation. Of course, fear of change alone was not responsible for the endurance of slavery in America; pride, prejudice, and racism all played leading roles. Nonetheless, it was this lethal combination—the marginalization of certain members of society, *combined with* the resistance to change—that initiated and preserved the institution of slavery. It is a similar combination that has initiated and preserved one of the most serious injustices of our generation, that is, The War on Drugs.

In 1972, President Richard Nixon first coined the language, “The War on drugs”, in which he declared a legislative initiative that would produce harsher penalties for drug use and drug trafficking, and would expand the number of offenses that could be prosecuted.¹ The aim was simple: *reduce illicit drug abuse, reduce illicit drug trafficking, reduce death from illicit drug overdose, and reduce*

crime surrounding illicit drugs. Despite voicing clear and sensible intentions, The War on Drugs has failed (and continues to fail) in each of these areas, so much so, that it is unclear if these were indeed the primary goals. At this point, if we were genuinely concerned with solving the problems surrounding illicit drug use, then we would pursue a different remedy. The vast and growing body of science surrounding the issues suggests that this approach has instead proven to increase the harms it set out to diminish. In addition, the harsh criminal justice system has created enormous new harms that ostracize the poorest and most vulnerable members of our society. Joanne page, director of the Fortune Society, put it the following way in the documentary, *The War on Drugs Winners and Losers*:

"The United States is engaged in an experiment of wholesale incarceration that is having a multi-generation impact, and I think we are barely beginning to see the damage it's doing. We have a two-tier system in this country of dealing with substance abuse: if you're white and a child of privilege, you are likely to end up in drug treatment if you have a drug problem. If you are poor and you are a person of color, you are likely to end up incarcerated, and it's a very vivid division. What we've seen is an escalation in incarceration rates, and we've seen incarceration being used at such a high level, that in some communities it is the dominant cultural force in the lives of young people growing up. We've seen the prison system and the jail system expand to the point where in California, they spend more on their criminal justice system [on the prison system piece alone] than they

now spend on education."²

We will reach a point in the future where we look back and gravely shake our heads. The War on Drugs is one of the most serious transgressions of human rights of this generation. This first chapter will expose its many failures, address the newly created harms that have resulted from making drugs illegal, and point out both the victims and the beneficiaries of the system. This should reveal the justice issues at play, which will provide an avenue for some important philosophical discussion in the following chapters.

It is important to first address a few misconceptions that plague our understanding of drug use. Paula Mallea informs us in her book *The War on Drugs: A Failed Experiment*, "Drugs have been selected for prohibition arbitrarily, and not according to which ones cause harm, or whether they cause harm at all. Decisions to ban drugs have been based on political expediency, prejudice, and ignorance."³ The information we receive about illicit drug use and its potential dangers comes most directly and most consistently from the media and propaganda. Politicians often paint a deceptive picture that is polarizing and dangerous. Illicit drugs are injected with a moral stigma that perpetuates the spread of inaccurate information, and fosters prejudices against those who choose to use illicit substances. Since the beginning of the nineteenth century, when the first laws prohibiting drug use were passed⁴, Americans have been administered information based on prejudice and fear. Blind to this, many ingest this information as if it were scientific fact. In 1937, Harry J. Anslinger, commissioner of the U.S. Federal Bureau of Narcotics (what is now the Drug Enforcement Administration or DEA), offered us this:

Marijuana is the most violence-causing drug in the history of mankind. Most marijuana smokers are Negroes, Hispanics, Filipinos, and entertainers. Their satanic music, jazz and swing, result from marijuana usage. This marijuana causes white women to seek sexual relations with Negroes⁵

Over the years, Marijuana has slowly crept into the mainstream. At the moment 20 states and Washington DC allow the prescription of medical marijuana⁶, so accurate information about the drug has become more available to the general public. In hindsight, we see the statement from Harry Anslinger to be nothing more than ludicrous racism. Marijuana is known to be one of the most harmless therapeutically active substances on the planet. The United State's Drug Enforcement Administration (DEA)'s administrative law judge, Francis Young, says users cannot die from using marijuana:

In order to induce death a marijuana smoker would have to consume 20,000 to 40,000 times as much marijuana as is contained in one marijuana cigarette. NIDA-supplied marijuana cigarettes weigh approximately .9 grams. A smoker would theoretically have to consume nearly 1,500 pounds of marijuana within about 15 minutes to induce a lethal response... In strict medical terms marijuana is far safer than many foods we commonly consume. For example, eating 10 raw potatoes can result in a toxic response. By comparison, it is physically impossible to eat enough marijuana to induce death.

Marijuana in its natural form is one of the safest therapeutically active substances known to man.⁷

Despite this information, The United States still enforces harsh penalties on those who decide to use or sell marijuana. According to Drug Policy Alliance, 1.53 million people were arrested on non-violent drug charges in 2011 in the U.S. Of these, 757,969 people were arrested for marijuana offenses and 663,032 of these for possession only.⁸

Voices similar to Harry Anslinger still plague our conception of drug use today. It is very difficult to eradicate delusion once it has crept into the mainstream conscience. Decades of misinformation, fear, and racism have helped establish a culture of perverted misunderstanding and hatred. In the 1920s, Congress heard testimony that, “most of the attacks upon white women in the South are the direct result of cocaine-crazed Negro brain.”⁹ There were rumors of superhuman strength exhibited by blacks high on cocaine.¹⁰ Today, crack cocaine still receives a similar defamation in the mainstream media. The use of crack cocaine has been erroneously stigmatized as causing uncontrollable violence and addiction. For example, *Newsweek* quoted the director of a cocaine hotline saying, “There is no such thing as the recreational use of crack. It is almost an instantaneous addiction... crack is the most addictive substance known to man right now.”¹¹ President Bill Clinton’s spokesman Mike McCurry asserted that crack and cocaine “were two different drugs”, and that “crack cocaine is associated with much more violent, much more dangerous, much more anti-social behavior.” Minorities, specifically young black males, are victimized most by the crack cocaine stigma. They are understood to be

the most frequent users, even though the research tells us that usage rates are nearly identical across races.¹² Contrarily, powder cocaine, which is thought to be used most frequently by white males, receives a much less damaging stigmatization. Qualitatively, however, the two substances are identical. A 1989 Congressional Research Service (CRS) report explains, “*Crack is cocaine powder converted to a smokable base state by mixing with baking soda (or ammonia) and water.*”¹³ Dr. Carl Hart, Neuropsychopharmacologist and one of the few experts to have done clinical trials of human beings, gives us the facts:

The route of administration [smoking, snorting, injecting, etc.] determines the intensity of the high...only 10 to 20 percent of crack users ever become addicted... Unlike heroin or alcohol or tobacco (or even caffeine), cocaine withdrawal does not include physical symptoms... Cocaine addicts are not hopelessly impulsive. They will not choose the drug inevitably over other available rewards.¹⁴

There is a clear contrast in what science tells us, and how the policy is constructed. Crack cocaine and powder cocaine are as similar to one another as are eggs over-easy or hardboiled, but federal law treats 1 gram of crack cocaine as if it were 100 grams of powder cocaine. This means that someone must be in possession of 500 grams of powder cocaine in order to receive the same sentence as someone in possession of 5 grams of crack. This policy, rightfully so, has been widely criticized as racially motivated. It is important to note, the Obama administration has since reduced the disparity to 18-to-1, but nonetheless, it remains unclear what justifies the disparity.

The information we receive is adulterated. It is coated with a fear and loathing that neglects the results of scientific research. As a result our drug policy is mindlessly constructed, and instead of solving problems, it creates and perpetuates them. It is estimated that the United States alone has spent 2.5 trillion on The War on Drugs over the past 40 years¹⁵. With an expenditure of this magnitude, we should expect immense and measureable progress in reducing harms that stem for drug use, yet this progress is still missing.

One of the most popular arguments for punishing drug users is that it works as a deterrent. That is, if we were to refrain from punishing people who use drugs, then there would be significantly higher usage rates across the board. Admittedly, this is a genuine concern, yet this idea is simply at odds with what scientific studies suggest. The *Tools for Debate* report by the International Centre for Science in Drug Policy (ICDSP) in Vancouver assessed data on marijuana prohibition in the United States.¹⁶ It found that anti-drug law enforcement costs related to marijuana alone had increased by more than 600 percent from 1981 to 2002 (funding rose from \$1.5 billion to \$18 billion). At the same time, however, cannabis use among US 12th graders rose from 27 percent in 1990 to 32 percent in 2008, drug potency increased 145 percent, and the drug remained almost universally available (80 to 90 percent of 12th graders maintained it was “fairly easy” or “very easy” to obtain). In addition, the lifetime rate of marijuana use (meaning a person has used marijuana at least once in his or her lifetime) in the United States is more than double that observed in the Netherlands, where marijuana is all but legal (42 percent compared to 20 percent).¹⁷ Of course, cultural differences could contribute to explain the variation

in usage; however, if we consider evidence from America's alcohol prohibition era, the deterrence claim still appears inaccurate. Research from this period suggests, although the total alcohol consumption did decrease slightly, there were also a decrease in beer consumption, and an increase in the consumption of hard liquor¹⁸. This demonstrates what is often called the "iron law" of prohibition. That is, drug prohibition tends to drive out weaker and milder forms of drugs, and to increase the availability and use of stronger and more dangerous drugs.¹⁹ Milder drugs are bulkier, harder to smuggle, and less profitable, so drug traders take most interest in the more compact, potent substances. Even if prohibition does decrease consumption, it simultaneously puts more dangerous drugs into circulation.

Treatment programs have shown to cost less and work better for decreasing drug use, drug overdose, and disease transmission. The Drug War is, put simply, a mission impossible. Preaching abstinence is an impractical sentiment, and a "drug-free world" is altogether unattainable. It is better to grip the realities of the world (i.e. people will use drugs) and try to create a safe environment, than to reject them in favor of an unrealistic ideological vision. InSite, a safe needle exchange and treatment center in British Columbia, was established in 2003 in response to the epidemic of illness and death associated with large numbers of heroin-addicted people in the area. It has shown to be extremely successful:

Its staff has intervened in 336 overdoses since 2006, and no deaths have occurred at the facility... It has supervised more than 1.8 million injections since it opened, and oversees an average of 587 injections daily, without any deaths from overdose... Fatal overdoses dropped

by 35 percent in the vicinity of InSite in the two years after it opened...There is a detox center on its premises that claims a 43 percent completion rate for addicts who wish to seek treatment... Today [as of 2014], British Columbia is the only Canadian province in which the rate of HIV infection is going down...²⁰

Furthermore, treatment centers like InSite are reported to be a better investment. One American study found that every dollar spent on drug treatment in the community returned \$18.52 in benefits to society.²¹ At its most expensive, drug treatment for a patient in the US would cost \$6,800 annually (though it could be as low as \$1,800). Incarceration of an individual, however, would cost \$25,900 per year—almost 4 times as much as the most expensive of the alternative treatment programs.²² Similar to the methodology for Sex Education, it is more sensible to try and cultivate a safe environment, than to try and eradicate an environment altogether. The latter may be impossible. Just as we can't stop people from having sex, we can't stop people from using drugs. An example of this reality, which highlights the impossible effort of prohibition, is the pattern and frequency of drug importation to the US. According to a 1999 study by the United Nations, 5.5 million trucks cross the Mexico-US border annually, but the entire annual supply of drugs trafficked across that border would fit into just 60 trucks. Thus, the solution to this problem is one that requires a bit more thinking. Stopping all importation is an absurd request.

Another popular prohibitionist argument rests on the claim that there is an inherent violence associated with both drug use and drug sale. That is, keeping drug

users and drug sellers off the streets makes for a much safer environment. Again, this is a genuine concern, but still the argument at hand is misguided. It is true that most research suggests there is a strong link between illicit drug use and violence, but the reason as to why remains unsettled. Fieldwork by drug researchers considered 414 murders that took place in New York City between the months of March and October in 1988. 218 (53 percent) of these murders were classified by the police as drug related. Of these 218 murders, 162 (74 percent) were caused by fighting among drug gangs, eight (3.7 percent) were killings to obtain money for drugs, and 23 (10.6 percent) were deemed to be the result of the consumption of alcohol. Only three of the 218 drug related murders involved crack alone.²³ In sum, this research found that drug related homicides have been overwhelmingly caused by The War on Drugs, mainly turf battles between illegal drug cartels, and to an extremely minor extent, the consumption of crack. Researchers John Morgan and Lynn Zimmer make sure to note, "No drug *directly causes* violence simply through its pharmacological action..."²⁴ According to a panel of experts studying drug related violence for the National Academy of Sciences, "Most of the violence associated with cocaine and narcotic drugs results from the business of supplying, dealing, and acquiring these substances, not from the direct neurobiological actions of these drugs."²⁵ In addition, it is likely that the addict, who is willing to steal or kill in order to obtain money for drugs, would likely not be committing crimes if drugs were legal. It is estimated that most illicit substances would cost 10 to 15 percent of their black market price if they were legal (obviously, this can vary depending on decisions on taxation).²⁶ The evidence is clear. Prohibition, ironically, appears to

foster more violent behavior than it prevents, and the very thing we set out to eliminate (i.e. violent crime), is in fact being caused by our punitive approach. The black market is unregulated by government officials; thus, if there is a breach of contract, or a pressing need, drug dealers and drug users must take matters into their own hands, and one of the only tools they have at their disposal is violence.

Earlier, when discussing the 100-to-1 (now 18-to-1) crack and powder cocaine disparity, I suggested that this policy was racially motivated; briefly, I would like to address this claim. It is very hard (if not impossible) to prove racist intent, given that it hides in the conscience of clever and experienced political players. People know better than to voice their racist dispositions, not because they don't exist, but rather because they know it will harm them in the end. This difficulty often leads people to dismiss policies as being free from racism. Nonetheless, when considering our history in tandem with the consequences of our current drug policy, it is hard to make a case that no racist objectives exist, or at the very least that subconscious bias plays no role in our policy implementation. Here is what we do know: crack cocaine is considered to be a "black drug", while powder cocaine is considered to be a "white drug". Whites and blacks use and sell drugs at nearly identical rates, but blacks are arrested much more often for drug crimes, and blacks are more likely than whites to be convicted and imprisoned.²⁷ Blacks convicted of drug offenses receive harsher sentences than whites primarily because they are arrested more often for crack cocaine offenses.²⁸ Recent literature in the social sciences has also discussed the existence of implicit bias, that is, biases existing in people who do not think they have racist beliefs, but for example, who do things like

evaluate job candidates differently due to their race. Systematic implicit biases are easier to prove when one gathers empirical information about how the criminal justice system works overall.

When we analyze the information about incarceration paying attention to race, we can demonstrate the discriminatory workings of our legal system. 1 in 3 black men are likely to be incarcerated at some point in their lives as a result of the system we have created, as opposed to 1 in 17 for white men.²⁹ For the past two decades, imprisonment rates for blacks have been 5 to 7 times those of whites.³⁰ Admittedly, the racial impact is so significant that it requires a more detailed investigation. A later chapter discusses this specific issue in more depth.

From every sensible measure of success, The War on Drugs is an utter failure. The problem is that the War on Drugs does not employ a sensible measure of success. It sees the number of arrests, convictions, and imprisonments as a worthy criterion for achievement. Every drug user who is locked up, and every drug trafficker who is sentenced to life in prison, is tallied as a victory. It is a twisted attempt at an ideological “drug-free” world that disregards normal human tendencies and rejects compassion of any sort. In order to fully understand the significance of the harms created by The War on Drugs, we need to investigate the different normative considerations at play. The following chapters initiate and pursue this investigation. This chapter has shown the consequent damages that have resulted from a policy that is excessively punitive—the chapters that remain introduce a more philosophical approach to the issue. The next chapter (Chapter 2) outlines a theory of justified punishment that we can employ. Chapter 3 shows how

that theory is inconsistent with the current punitive policy, and explains the injustice in punishing drug users from a retributivist standpoint. Chapter 4 focuses specifically on the issue of racially discriminatory enforcement, hence adding another argument against punishing drug use. And finally, Chapter 5 proposes a policy of drug legalization, showing it as the best solution to the problems the current legal system has created.

References

¹ Mallea, Paula. 34

² The Fortune Society is a non-profit community-based reentry service organization that focuses on helping those released from prison transition into the working world. The passage is taken from the documentary *The War on Drugs: Winners and Losers*.

³ Mallea, Paula. 34

⁴ Benavie, Arthur. x

⁵ Mallea, Paula. 25

⁶ Mallea, Paula. 20

⁷ Marijuana Rescheduling Petition, Docket No. 86-22, Francis Young, 1988

⁸ This statistic is mentioned in a Drug Policy Alliance fact sheet titled “ The Drug War, Mass incarceration, and race”

⁹ Mallea, Paula. 65

¹⁰ Benavie, Arthur. 25

¹¹ Mallea, Paula. 67

¹² Tonry, Michael H. *Punishing Race: A Continuing American Dilemma*. New York: Oxford UP, 2011. Print.

¹³ Library of Congress. Congressional Research Service *"Crack" Cocaine*, 1989.

¹⁴ Mallea, Paula. 66-68

¹⁵ Mallea, Paula. 109

¹⁶ International Center for Science in Drug Policy (ICSDP), *Tools for Debate: US Federal Government Data on Cannabis Prohibition*, 2010

¹⁷ Mallea, Paula. 110

¹⁸ Levine, Harry G., and Craig Reinerman. 467

¹⁹ Levine, Harry G., and Craig Reinerman. 466

²⁰ Mallea, Paula. 53, 54

²¹ Mallea, Paula. 119

²² Mallea. Paula 120

²³ Benavie, Arthur. 36

²⁴ Benavie, Arthur. 36

²⁵ Benavie, Arthur. 36

²⁶ Benavie, Arthur. 40

²⁷ Tonry, Michael. 59-74

²⁸ Tonry, Michael. 73

²⁹ Bonczar, Thomas P. 1

³⁰ Bonczar, Thomas P. 1

Chapter 2: When is Punishment Justified?

Before discussing the reasons for adopting policies of drug legalization, a preliminary discussion of the reasons that justify legal punishment is necessary. The centerpiece of the argument for drug legalization is concerned with what justifies the employment of punishment for those who use, produce, and sell drugs. Thus, we cannot criticize punishing drug users, producers, or sellers, without first developing a theory of punishment that we can utilize. One that includes answers to the questions: “*What is punishment?*” and “*When is punishment justified?*” If we are to make the claim that punitive drug policy is unjustified, we must first understand when punishment is and is not justified in general. The following pages initiate a discussion of legal punishment with the goal of finding a conception we can use in the consideration of drug legalization and the examination of current drug policy.

Formulating a proper conception of punishment has been a central task in legal and political philosophy. A handful of theories dominate the literature, but there has yet to be a single theory that is unchallenged or completely agreed upon; thus, there is much criticism and exchange within the debate. Important questions give rise to complex issues: What is punishment? What is the distinction between punishment and *mere* penalty? What could justify state employment of sanctions on citizens? When is state employed punishment justified? What sorts of punishment should we permit? Answers to these questions differ greatly, but for the sake of simplicity I will focus on three general classifications: *retributivism*, *consequentialism*, or *mixed theories* of punishment.³¹ Retributivists look into the past for the justification of punishment. They consider the seriousness of the criminal

offense and then make a decision on what type of punishment (if any) makes the most sense on the basis of a notion of desert. Consequentialists, on the other hand, look to the future for the justification of punishment. Their central claim is that a policy of punishment is justified if the foreseeable benefits outweigh the burdens that are imposed. This benefit/burden calculation may take into consideration the individual (i.e. the offender) or society as a whole, depending on the consequentialist perspective that is employed. Not surprisingly, mixed theorists combine ideas from both retributivism and consequentialism. They assess both the level of desert and the potential benefits in their justification of punishment. A variety of “mixed” theories exist, but in general, they claim that in order for punishment to be justified an offender must not only be guilty³², but there must also be sufficient benefits produced by punishing him or her. Each conception of punishment gives rise to its own problems and objections; however, a particular form of a mixed theory seems to avoid the most damaging criticisms. In the following paragraphs I will construct a particular definition of punishment and then raise objections to the aforementioned conceptions in order to show how a mixed theory is most fitting.

Before we begin to examine established conceptions of punishment and its justification, we need to first have a clear idea of what it is we are talking about. There is a general notion of punishment that applies to students who cheat, children who disobey their parents, and athletes who break rules; however this type of punishment is not the focus of this paper. The focus here is legal punishment, which concerns *state-employed* burdens and sanctions. So, how do we best define *legal*

punishment? In hopes of a precise definition, it is sensible to start with a simple definition (that appeals to our most basic understanding and intuitions), and then work our way towards a definition that captures our more reflective beliefs. A simple definition that comes to mind—*any burden or sanction imposed (by the state) on an individual for acting against with some set of rules*³³—is a good place to start. Quickly, we see that this captures a general understanding of punishment, but it is clearly not without flaws. The range for what counts as punishment is too broad. Things we think to be different from legal punishment are accepted as such by this definition. For example, parking tickets, fines for littering, noise ordinance fines, and the like are all burdens placed on an individual for breaking some set of established rules; however, we generally do not categorize this kind of treatment as legal punishment. Instead, we understand these burdens as penalties. They appear less forceful, less imposing, and less serious than the kinds of burdens punishment should impose. In addition, it would be harsh to call the infringement of rules against parking, trash, and/or noise a crime; *violation* is more fitting. How then, do we distinguish crime from violation, and punishment from penalty?

Violations are distinct from crimes in the procedure for dealing with them and the mildness of the sanctions they attract, but what seems to *make* them different is the absence of a serious moral infringement. Different criminal systems may draw the line between crime and violation at different points; however, when we think of crime, we tend to include some type of moral misconduct. We often don't consider traffic violations to be "real crimes", because they lack this specific moral component. Instead, we see them as violations that are simply *treated as*

crimes. The distinction between penalty and punishment follows much the same pattern in that there is a clear difference in severity. Joel Feinberg speaks on this issue and constructs a definition that is useful for our purposes. He argues that:

Both the hard treatment aspect of punishment and its reprobative function [i.e. condemnation] must be part of the definition of legal punishment... There is a symbolic significance largely missing from other kinds of penalties.³⁴

Thus, two critical components constitute the definition of legal punishment: (1) hard treatment, and (2) condemnation. Following Feinberg, I want to stress that intrinsic to punishment is an expressive function of disapproval, which is expressed by the imposed hard treatment. This seems to capture both our intuitive understanding and experience, but also correctly separates punishment from other kinds of burdens. So our definition now looks like this: *any burden or sanction imposed on an individual for acting against some set of rules that both inflicts hard treatment and expresses social condemnation.*³⁵ No definition is perfect, but this will be sufficient for our purposes at the moment. From here, we can move on and examine theories of the justification of punishment.

Retributivism deals fundamentally with penal desert. Guilt, and the desert level of the defendant serve as the justification for punishment, which is to say, not only that the innocent must be exempt from punishment, but also that the guilty should be punished to the extent they deserve. Penal desert provides both a necessary and sufficient reason for punishment in this case. It is important to note that this is a moral concern existing outside the law (that is, different from the kind

of desert that derives strictly from breaking an established rule); however, the retributivist thinks ideally the two should coincide. This conception is attractive because it appeals to many people's intuitive understanding of crime and punishment. When an offense is committed, we feel the urge to make some type of corrective action. We sense an imbalance, and punishment is the most compelling response. We see a moral line that is crossed with certain actions, and thus the punishment is *earned*. When an armed robbery is committed, we hope to see the offender go to jail for some time. We wish to burden the freedom of the offender and express our disapproval of their action. These sentiments tempt us towards retributivism, though it is not without weaknesses. The simplicity of its most central claim—*punish those who are deserving to the extent that they deserve*³⁶—leaves it vulnerable to objections.

A number of different retributivist theories exist, but they suffer from many of the same problems. For instance, the relationship between deservingness and punishment is unclear. How are we supposed to make an evaluation of the desert level of an offender and then connect it to an equal and appropriate punishment? Let's say a man has stolen your car. Undoubtedly he is guilty, but to what extent does he *deserve* to be punished? Should he be sent to prison for a year, five years, indefinitely? The ratio which desert converts to punishment seems arbitrary. Would it even be possible to construct an objective scale that converts crime to desert and desert to punishment—a scale that would be universally accepted? It is unlikely, and so punishment seems less a decision *based on the desert* of the defender, and more a choice of *what feels most appropriate* given the situation. This places too

much power in the hands of society. Because we have the capacity to punish harshly, determining punishment based merely on feelings of appropriateness is unjustifiable. It is possible that what feels appropriate, could in fact be much too harsh. It is unlikely that an objective desert-level exists for each offender, and if it did it is unclear if we would be able to identify it and then select the corresponding punishment. And so, desert alone cannot constitute the only justification for punishment.

A number of other problems persist for the retributivist; however, detailing each objection would prove tiresome, so I will just briefly mention a few of the most pressing concerns. Accordingly, the issue of vengeance is important to note. The notion of “deserving to suffer” that is rooted in retributivism seems reflective of the appetite for private revenge and feelings of vengeance. We typically don’t think these to be healthy motives or emotions to maintain, so justifying punishment based on these feelings seems wrong. Another related concern is the possible “zero-utility” of punishment. That is, if nothing is to be gained from punishing an offender, then what good reason³⁷ do we have to punish? Given the severity of the burdens the state has the capacity to impose, there should be some net gain or positive contribution that results from punishment. Without a net gain in utility, punishment appears to be unhelpful, even when our feelings support it.

This last criticism against retributivism is the basis for the consequentialist conception of punishment. The central idea of consequentialism—*punishment is justified when the benefits it produces outweigh the burdens it imposes*³⁸—focuses on the consequences or outcomes of punishment, and thus aims to produce certain

identifiable goods. With the most obvious good being crime prevention, punishment is therefore seen as a means to decrease crime through deterrence, reform, or incapacitation. This conception is tempting because of its practicality and optimism: it looks to make the future better than the past. We send armed bank robbers to jail for a long time in order to incapacitate them, but also to deter other bank robbers from stealing at all. This tendency aims toward a sensible goal (i.e. a safer future with less crime), but does this suffice for the justification of punishment? It is not clear that it does. If more effective methods of crime prevention existed, than punishment would not be justified, *even if it outweighed the burdens it imposed*. Punishment seems unnecessary and unwarranted, if alternative strategies could achieve the same end absent the imposition of any serious burdens. Notably, many hold that a therapeutic or rehabilitative approach would in fact be more efficient in generating reform and correction, and therefore crime prevention. In addition, it does not seem justified to punish someone only for an intended benefit. This seems to allow the innocent to be punished, or the guilty to be punished more than they deserve, as long as the positive benefits outweigh the imposed burdens.³⁹ Nearly everyone agrees that punishing the innocent is indefensible, yet under this conception it seems as if it were permissible. Other issues exist for the consequentialist, but we need not specify them here, given the seriousness of the objections we have discussed.

Significant problems that undermine the justification for punishment exist for both the consequentialist and the retributivist; fortunately, many of these problems can be avoided with a proper mixed theory of punishment. Mixed theories

aim to combine the most useful elements of retributivism and consequentialism in order to counterbalance their defects. A variety of mixed theories exist but my particular construction, all other things being equal, looks as follows: *punishment is justified only when (1) the offender is guilty and deserving, (2) he is punished to the extent he deserves, and (3) there will be consequential benefits from his punishment that outweigh the imposed burdens.*⁴⁰ Thus, for a mixed theory, punishment must be useful in crime prevention, but also must only be employed proportionately on those who are guilty and deserving. This allows a mixed theory to avoid some of the most damaging criticisms. It is important to note the ordering of these three requirements. In my particular conception, the first requirement (that the offender is deserving of punishment) is the most important consideration. In no instance is it justifiable to punish someone who is not guilty. The second requirement (that the offender is punished to the extent he deserves) is important, but here I am concerned most with the possibility of punishing someone too severely. It is more justifiable for an offender who is deserving of harsh punishment to escape it, than it is for an offender who is hardly deserving of punishment to face harsh treatment. The last requirement (that considers consequential benefits) is included to ensure there is a net gain in utility resulting from punishment and to reduce the problem of vengeance retributivists face, however, in extreme circumstances, I am willing to make exceptions to this rule. If there were a scenario where punishing someone could result in serious societal harm, than it is possible that it would make sense to refrain from punishment, even if the person were guilty.⁴¹ Thus, as it stands, these

three requirements are ordered with respect to their significance to this mixed theory of punishment.

Given that this mixed theory endorses both retributivist and consequentialist ideas, it is important to address a few of their objections. The major consequentialist objection (of punishing the few for the good of the many) is neutralized given the priority desert plays in this mixed theory. The two retributivists concerns—that is, the relation of moral guilt to punishment, and the problem of vengeance—however, deserve some attention. These are important concerns but, but are not totally unavoidable in a proper theory of punishment. Considering moral desert as it relates to punishment: we may not be able to have an exact scale that determines which punishments the state should impose, but nevertheless we do hold some general intuitions about how the two relate. For example, the death penalty is an excessive punishment for a simple assault, and one week in prison is too light for a serial murderer that has committed many gruesome crimes. We have developed some range of acceptable punitive responses to different crimes, and although the system could be adjusted and improved by criticism, we still can argue about what responses are appropriate and what are not, and legal guidelines can be used to guide sentencing so that it is not too harsh or too light. About the concern with vengeance: some criticize retributivists by saying that all they want is vengeance, but it is not really clear that the motivation behind punishment is always vengeance. Punishment may help to channel some people's desire for vengeance, and prevent private individuals taking the law into their own hands; however, many other people think that serious crimes ought to be punished without having any particular

vengeful desires. So whether people are vengeful or not is not completely relevant, as long as it does not lead to excessive punishment.

Combining elements from both retributivism and consequentialism to create a mixed theory of punishment helps minimize the damage from objections that the two conceptions face on their own. My particular theory places slightly more emphasis on retributivist concerns, but nonetheless, includes a consequentialist element. Admittedly, a complete defense of a mixed theory requires much more attention, and it is possible I have been too brief. However, my goal is not to develop an indisputable defense for the mixed theorist, but instead show how this mixed theory works *better* than a purely retributivist or consequentialist conception. By showing how this mixed theory can avoid the most pervasive criticisms against alternative conceptions of punishment, it becomes clear that it is likely to be the *most useful* conception we can employ in considering the issues of drugs and punishment.

Two important notes: first, there is a significant variety of retributivist, consequentialist, and mixed theories. Each conception is open to a number of distinct understandings, and there is dispute within conceptions over which understanding is most fitting. What I have done is simply summarize and evaluate the most central claims of each conception, in order to decide which will be most valuable for our purposes. A thorough discussion of legal punishment would require much more time and consideration—books have been written on the subject. Second, I have refrained from initiating a discussion of abolitionism, which argues that all punishment should be abolished and replaced with alternative forms of

treatment. An abolitionist theory requires that we reject punishment in all cases, and that is simply not the position I wish to defend. My intention is to accept that punishment is justified in some instances, but that drug use is clearly not one of those instances. Discussing an abolitionist theory is not necessary for my purposes; I do not intend to abolish punishment for all legal offenses, only offenses as they relate to drug use, production, and sale.

In sum, a mixed theory is to be the most promising and useful conception of punishment. It captures a variety of our intuitions, and it can provide a very comprehensive justification of punishment. In addition, its central claim escapes the most crippling criticisms other conceptions endure. Thus, in the consideration of drug legalization and drug policy, I will employ a mixed theory of punishment that combines crucial elements of both retributivism and consequentialism. The goal in the next chapter is to show how punishing drug users is inconsistent with this theory of justified punishment.

References

³¹ The Stanford Encyclopedia of Philosophy had a great article on legal punishment by Anthony Duff that utilizes these three classifications. He summarizes and borrow the ideas of many notable philosophers on the subject. Joel Feinberg, who is cited in the article, also uses these classifications in his Essay “The Expressive function of Punishment”. I discuss ideas from Feinberg’s in more detail later in this paper.

³² Guilty in this sense is intended to mean *deserving of punishment*.

³³ This is a definition of punishment, which I have created that I think accurately captures our broadest sense of what punishment is exactly.

³⁴ Feinberg, Joel. 630

³⁵ The second part of this definition (“*expresses social condemnation.*”) is taken from Feinberg.

³⁶ This is a reformulation of the definition of retributivism that is used in the Stanford article on legal punishment.

³⁷ Retributivists say the reason is desert, but not everybody shares this view.

³⁸ Again, this is a reformulation of a definition used in the Stanford article on legal punishment.

³⁹ This can be the case for the consequentialist; however if less punishment would produce the same or more benefit, then the consequentialist would opt for other alternatives.

⁴⁰ I am following Duff’s explanation of mixed theories; however, this three-part definition is of my own construction.

⁴¹ Sometimes criminals, such as drug lords, can be extremely powerful, and may have serious influence over many people, even if they have committed gruesome crimes. If a criminal of this nature were to face severe punishment (such as life imprisonment or the death penalty), it is possible that there could be serious and unwanted societal consequences like rioting, increased violence, gang warfare, increased death/murder, etc. I understand circumstances like this to be rare, but still, in a case like this it may make sense to refrain from punishment, and find an alternative solution.

Chapter 3: Forming an Appropriate Debate and Responding

American drug policy punishes drug users more frequently and more severely than any other nation in the world. The consequences for being caught using drugs are extreme and the law is uncompromising. Punitive responses to drug use in other nations hardly even warrant a comparison given how enormous the risk of punishment is in America. In the realm of drug use and punishment we are in a league of our own.⁴² Harsh, punitive policy (once established) often escapes critical evaluation because many have investment and faith in the American legal system. Many assume that a policy that imposes severe punishment and that endures has been subject to heightened scrutiny and therefore, if it survives the many different steps of the legal process, that it must be founded upon clear arguments that properly consider the requirements of justice. It is assumed that these punitive responses rest on carefully calculated justifications, that the punishments we impose are necessarily derived from reasoning we agree with; and thus, that there is remarkably good reason for our current status. Ironically, locating these corresponding reasons and justifications proves to be difficult. An obvious and indisputable justification should be present for the number of incarcerated drug *felons* that America maintains, but it is not. The justification for responding to drug use with criminal punishment is absent, or it is hidden from the public eye—and this is cause for worry. The status quo requires an investigation. My purpose in this chapter is to construct the best possible argument for criminalization (i.e. for punishing drug users), evaluate its merits, and in the end show how it fails.

The Current Debate

At the moment, most discussions of drug use begin with the question: *Why should drug x be legalized?* We are most concerned with finding reasons to *stop punishing drug users*, rather than providing reasons *in favor of punishing* them—a small but important distinction. We must not forget punishment is the worst thing a state can impose on its citizens, so it need be adequately defended. At the moment, however, the starting point of the debate assumes the state is already justified in punishing drug users, and so we remain clueless as to what reasons justify the current state of affairs. By beginning with a question that demands justification for change, rather than one that demands justification for the current state of affairs, we allow drug criminalization to escape an essential evaluation. The first step is to ask for a justification for the punishment of drug users. Before we move any further and discuss the possibilities of what change may bring, we need to first be presented with an adequate reason for why things are the way they are; otherwise, we make a dangerous assumption and make the job of the prohibitionist much too easy. They need only make a few predictions about how refraining from punishment would make things worse, while rejecting the likelihood of the possible benefits. In no way should this strategy constitute an adequate defense. The most central issue of the debate—*Why does the consumption of drug x deserve punishment?*—Should be our starting point. This demands an argument that explains why punishment is the correct response to drug use. One that makes clear exactly why it is we choose to impose severe burdens on drug users and allows us to understand this particularly harsh form of treatment. From here, the debate is simple: prohibitionists present

this argument and critics of the current system respond. This is how the debate should ensue. The central question of the debate has been established, and it is clear now where we should begin and proceed.

Though the requirements for a more fruitful debate are clear and direct, satisfying them has proven to be difficult for prohibitionists. No effort has been made to explain what about drug use makes it appropriate to consider someone a criminal and treat him or her accordingly. Punishment is the correct response to assault because the offender is understood to be *guilty*: he or she requires correction, he or she may be dangerous to other citizens, and he or she must endure retributive action. It is unclear why punishment is the correct response to drug use. The sense in which drug users are *deserving* of punishment is not identified. A proper defense of drug criminalization—one that makes clear why drug users are *deserving* of punishment—has yet to be presented. Nearly every professional philosopher opposes the punishment of drug users, even though the policies they recommend vary.⁴³ This failure on behalf of the prohibitionists, this gaping hole in their defense, should make us pause. No professional philosopher has contributed to contemporary discourse a convincing justification for the punishment of drug users. Thus, it is the job of the critics to try and reconstruct the prohibitionist argument. In order for the debate to proceed, we need to try and formulate the *best possible* argument in favor of punishing drug users, and then show why it fails.

The Failure of the Prohibitionist Justification

James Q Wilson is one of the few figures that have offered a justification for the punishment of drug users. I have excluded him from the category of professional philosopher because he is foremost a political scientist and authority on public administration, which is a notably distinct realm. Nonetheless, he provides one of the few defenses that we can work with⁴⁴. He makes the argument that “dependency on certain mind altering drugs is a moral issue”, and for that reason deserves punishment. He explains:

That message [the moral message] is at the root of the distinction we now make between nicotine and cocaine. Both are highly addictive; both have harmful physical effects. But we treat the two drugs differently, not simply because nicotine is so widely used as to be beyond the reach of effective prohibition, but because its use does not destroy the user’s essential humanity. Tobacco shortens one’s life, cocaine debases it. Nicotine alters one’s habits; cocaine alters one’s soul. The heavy use of crack, unlike the heavy use of tobacco, corrodes those natural sentiments of sympathy and duty that constitute our human nature and make possible our social life. ⁴⁵

In no way does this constitute a faultless argument, but nonetheless, Wilson is persuasive to some people. He exaggerates the negative effects of cocaine, and in doing so he paints a deceptive picture of drug use that suggests that cocaine will cause these damages on anyone who decides to use it. The reality of the situation is not so dramatic, and there are a substantial number of people who either use

cocaine infrequently (maybe they have only tried it) or use it responsibly (in the same way that a person who drinks can do so responsibly). The moral stigma he attaches to cocaine use is arbitrary, and the essence of his claim depends simply on his attitude toward the drug, not on any quantifiable difference in harm. Wilson tells us cocaine use, unlike the use of tobacco, is a moral issue but he does not give us any convincing reasons why that is the case. He appeals to religious authority (specifically, in his reference to the soul), while attempting to articulate what a majority of people *feel is wrong* about illicit drug use. He understands that religion shapes much of the opinions that people have, and so in his reference to the soul, he is able to persuade his audience that something (even if that thing is hard to identify) is *morally wrong* about using illicit drugs. Wilson's argument lacks clear content and is truly nothing more than an expression of his misguided opinion. We cannot accept "soul corrosion" as a legitimate reason to punish drug use. Nevertheless, what he provides captures a representative view (even if that view is incorrect) and therefore deserves attention. In order to get the most complete picture of the argument, one more passage is important to note. He explains why it is wrong to use certain drugs:

The notion that abusing drugs such as cocaine is a "victimless crime" is not only absurd but dangerous. Even ignoring the fetal drug syndrome, crack-dependent people are, like heroin addicts, individuals who regularly victimize their children by neglect, their spouses by improvidence, their employers by lethargy, and their

coworkers by carelessness... We all have stake in ensuring that each of us displays a minimal level of dignity, responsibility, and empathy.⁴⁶

Wilson is exaggerating the effects of drug use to make a point. The claims he makes are dramatic and have no empirical support (at least that he has provided). Still, he sees a clear standard that is broken with drug abuse. He makes reference to certain moral duties that are associated with social roles (i.e. parent, spouse, employee, coworker, etc.). In abusing certain drugs, and thus failing these duties, a person contributes to the victimization of his peers. Failing our responsibilities is not a victimless crime for Wilson.

Again, it is important to note what Wilson offers is one of the only defenses for punishing drug users that is available. It is one of the few justifications that exist, and its best version (which I will soon develop), is the foundational reason that connects drug use and punishment. It is the source of justification for the imprisonment of millions of Americans. The argument is concerned primarily with the claim that drugs *harms the self* and *harms others*. Drug use imposes substantial harms both on the user, and on other people and is thus morally unacceptable. Wilson's argument is hypersensitive to these ideas. Preserving oneself and maintaining the duties one has to other people are both important moral duties so acting against them warrants severe punishment by the state. In order to formulate the best possible argument for punishing drug users, these ideas need to be addressed, but also expanded and clarified. So, given what we have, the *best possible argument* we can formulate looks as follows:

The use of certain drugs is morally wrong because (1) it transforms us into people we would rather not be, and (2) because it leads us to disregard the special responsibilities we have towards others. Drug use presents both substantial *harms to self* and *harms to others* that suffice to warrant criminal punishment.

This, at the very least, provides us with a proper starting point for the debate. The question—*why does the consumption of drug x deserve punishment*—has been answered and the task now is to evaluate the strength and legitimacy of this answer. We must determine if this argument succeeds.

The conception of justified punishment we have established requires that (1) *the offender is guilty and deserving*, (2) *he is punished to the extent that he deserves*, and (3) *that there will be benefits from his punishment that outweigh the imposed burdens*. As we have discussed, the weight of these requirements differs given their respective ordering, but regardless, the prohibitionist justification remains inconsistent with each of these three requirements.

Even if we agree that there are serious moral concerns associated with drug use of certain types, we still are not forced to assign drug users (of any sort) to the category of *guilty and deserving* of punishment. When properly understood, drug users avoid this categorization. The possible *harms to self* and *harms to others* that stem from drug use are typically not deserving of criminal punishment when they emerge naturally (that is, without any contribution from drug use). Thus, it should follow that these harms do not deserve criminal punishment when they emerge unnaturally (with some contribution from drug use). It is unclear why the same

harms are treated differently based solely upon the nature of their emergence.

Michael Huemer pays attention to this issue, and offers a political principle that helps us understand when an offense should be punishable. In his essay, *America's Unjust Drug War*, he explains:

If it would be wrong (because its not part of the government's legitimate functions) to punish someone for *directly bringing about* some result, then it would also be wrong to punish people for doing some other action on the grounds that the action has a *chance* of bringing about that result indirectly.⁴⁷

This principle highlights a flaw in the prohibitionist argument for punishing drug users. The potential *harms to self* (like damaging one's moral character, or risking one's health) and the potential *harms to others* (like failing one's social responsibilities or creating family/relationship problems) are not punishable criminal offenses in the first place. We understand state involvement in these types of harms to be inappropriate, so it should follow that we understand drug use in the same way. Given that drug use only has a *chance of indirectly bringing about* harms that we already exclude from state punishment; drug users, naturally, are not deserving of punishment.⁴⁸ Thus, the prohibitionist argument for punishing drug users fails to meet the first requirement for justified punishment.

Necessarily, if an argument fails the first requirement for justified punishment, it will also fail the second requirement for justified punishment. A person cannot be innocent, and also be *punished to the extent they deserve*. The two are mutually exclusive. Still, even if we concede that drug users are guilty (simply

because they broke the law), the punishments they face prove to be excessive. The harms that stem from drug use can be serious and certainly deserve some attention; however, they are drastically disproportionate in severity and intensity when compared to their corresponding punishment. At the worst, as Huemer points out, some drug users are losers and jerks. They may be lazy, irresponsible, self-deteriorating, and unreliable. They may inconvenience, irritate, and disappoint the people they interact with. These are serious concerns, but they stand insignificant in relation to the burdens imposed by criminal punishment. There is a clear imbalance between the severity of the punishment we impose, and the severity of the harms with which we are concerned. Drug users face the risk of imprisonment and a criminal label. Punishment deprives them of essential freedom to pursue their projects and isolates them from their friends and family. Furthermore, after conviction they inherit an indefinite criminal label that seriously undermines their opportunity for social reintegration, and attaches to them a stigma that attracts unwarranted condemnation and judgment. Even if we were to agree that drug users deserve to be punished (because they break the law), shattering their life prospects with imprisonment and a criminal label is undeniably harsh. There is no sense in which drug users are dangerous or *deserving enough* to receive this type of incredibly harsh treatment.

Admittedly, the prohibitionist justification for punishing drug users answers most directly to the first two requirements. The last requirement for justified punishment introduces a consequentialist concern, which deals with a slightly different question that is not: *why do drug users deserve punishment?* But rather:

what good is to come from punishing drug users? This requirement is addressed with reference to some empirical data in the first and last chapters. Here, however, it is important to note the philosophical issues with punishing drug users for an intended consequence. Prohibitionists often argue that we punish drug users to deter those who may otherwise be tempted to consume drugs. The idea is that without the risk of punishment, drug use would increase greatly, and so drug users need to face severe punishment not solely because they are deserving of such treatment, but rather because punishing them is necessary to ensure usage rates do not increase. Fundamentally, there is an issue with this idea—punishing the few for the benefit of the many is inherently unjustified. It is likely that traffic violations would decrease enormously if offenders were at risk for capital punishment, and it is possible that overall the world might be a safer place. That is, sentencing some traffic violators to death could decrease the total number of deaths, because dangerous driving would decrease enormously. This, however, in no way suggests capital punishment as a justified response. In fact, most everyone would understand it to be outrageously unjustified to sentence traffic violators to death. In this same way, it is outrageous that we are willing to punish drug users simply because it may have an effect on overall usage rates. In addition, the fact that prohibitionists include drug users *harm to self* as part of their justification for punishment is strange. They claim it is *better for the user* if they face the risk of punishment, because it may force them to stop using drugs. But if the concern is that drug use ruins lives, then it makes no sense to send users to prison and label them criminals, hence guaranteeing that their lives are ruined.⁴⁹ It is difficult to make the case that any

part of the justification for punishing drug users is genuinely concerned with benefiting the offender given the severity of punishment that exists.

Drug users do not deserve to be punished. There is nothing we can say to explain why drug use should warrant punishment. The worst possible harms we anticipate to result from drug use are already understood to be outside the realm of justified state punishment. Thus, these potential harms do not suffice to demonstrate why punishment is a proper response. It seems the reasons to punish drug users are based solely on groundless opinions and moral “gut feelings”. This is not good enough. We need to summon our most sensible and genuine capacities for reason and reflection, and realize that the millions of Americans in prison for drug use do not *deserve* to be there.

References

⁴² With less than 5 percent of the world's population, but nearly 25 percent of the world's incarcerated population, the United States imprisons more people than any other nation in the world—largely due to The War on Drugs. This information is available in The Drug Policy Alliance fact sheet: "The Drug War, Mass Incarceration and Race."

⁴³ A number of contemporary philosophers have given attention to the issue of drug use and punishment. Michael Huemer, and Douglas Husak offer the strongest criticism of the status quo, and make the case that punishing drug use is unjustified (Huemer in his essay "An Unjust Drug War", and Husak in his book *The Legalization of Drugs*). Peter de Marneffe (in *The Legalization of Drugs*) offers a more moderate interpretation of the issue, and believes there are reasons to attach penalties and restrictions to drug use; however, his theory still clearly opposes the status quo. He wants to avoid the possible harms that a legal environment would present; thus, he is in favor of punishing drug production and sale, but still opposes the punishment of drug use.

⁴⁴ In chapter 12: *Against the Legalization of Drugs* from his book, *On Character*,

⁴⁵ Wilson, James Q. 26

⁴⁶ Wilson, James Q. 24

⁴⁷ Michael Huemer. 226

⁴⁸ There are times when drug users deserve punishment, which would include things like operating heavy machinery while intoxicated; however this is not an issue with drug use per se, but more an issue of drug use in conjunction with some other concern (i.e. in this case operating a vehicle) because it imposes serious risks to other people.

⁴⁹ Douglas Husak touches on this idea in his book *The Legalization of Drugs*.

Chapter 4: Drug Laws and Discriminatory Enforcement

Racial disproportionality in drug related convictions as a result of discriminatory enforcement is arguably the most significant injustice created by The War on Drugs. Racial discrimination is a serious issue within American drug policy, and consequently there is enormous disparity in drug incarcerations among minorities, and most specifically, among young black males and non-white Hispanics. Unfortunately, despite the evidence, racial discrimination appears to only generate minor opposition to the status quo. Shifts in consensus about drug laws instead originate most frequently from economic or public health concerns. Power is in numbers, so naturally, it is difficult for the outnumbered to stimulate significant change. The serious concerns of members of minority groups most affected by the enforcement of drug laws are understood to be secondary. Philosophers have examined the problem of racial discrimination in law enforcement. Ernest Van den Haag and Stephen Nathanson have discussed this problem with a special focus on the administration of capital punishment, but nevertheless their arguments can be extended to apply to our discussion. This chapter considers the dialogue between van den Haag and Nathanson in addition to some empirical evidence concerning racial disproportionality in drug related convictions. Sociologists Michael Tonry and Michelle Alexander provide us some of this information and their work is referenced to demonstrate the severity of the issue. The goal is to indicate the significance of racial discrimination and inequality with regard to law enforcement in the U.S., and then show how it occurs in our current system about drug laws.

For the sake of argument, we will leave aside the question of whether there are good reasons that justify drugs laws, in order to consider how the enforcement of drug laws works in practice. The preceding chapters make clear the unfairness in punishing drug users, but here the goal is to focus specifically on the injustice of discriminatory law enforcement. In his piece, *In Defense of the Death Penalty*, van den Haag claims discrimination is irrelevant to the question of justice with regard to the death penalty. He holds a retributivist view, and in his view the main consideration of justice is whether someone accused of a crime is guilty of a serious legal and moral offense, and as a consequence deserves to be punished. He admits, however, that punishment can also be further supported by consequentialist reasons, primarily because of its deterrent effect. He argues that punishing the guilty should take priority over enforcing the law in ways that avoid discrimination. We can call his conception of justice “non-comparative”, because it does not compare or contrast the ways in which two or more persons are treated who are similar in relevant respects.⁵⁰ He sees a clear distinction between the demands of justice and the demands of equality, stating the following:

Discrimination is irrelevant to the moral question... if [a policy] is morally just, however only discriminatorily applied to some of the guilty, it remains just in each case in which it is applied... unequal justice is still justice. The guilty do not become innocent or less deserving of punishment because others escaped it.⁵¹

This idea is representative of American attitudes towards drug users, and seems in part, to help explain why racial disproportionality is so often overlooked as a

serious issue. Once a guilty criminal stigma is attached to a drug user, that user becomes defenseless. Once this happens, it no longer matters if blacks are 5 times more likely to be arrested for a drug offense than whites⁵², because they are nonetheless guilty. It's unfortunate that so many more black people are punished for selling drugs, but so be it, they have only themselves to blame. Though persuasive to some, this shows a severely narrow understanding of justice that works to maintain racism and other prejudices. Under this conception, justice is preserved even when irrelevant factors like race play a role in judgments about guilt and desert.

In chapter 3 a non-comparative approach to the issue of drug use and punishment was employed, but here it is important to introduce additional considerations that rely on a comparative approach: considerations that require us to compare and contrast how different groups of people are treated. Nathanson responds to van den Haag, claiming that sometimes it is adequate to judge cases in a separate, non-comparative way, but nevertheless, certain types of discrimination in law enforcement count as seriously unjust. He challenges van den Haag's conception of justice in favor of a more comprehensive theory, which properly considers the complexity of legal punishment, and acknowledges the types of contributing factors that make discrimination unjustified. In his article⁵³, he describes a variety of arbitrary punishments. Naturally, punishment requires a selection process (i.e. who to punish), and that process can vary greatly for any given punishment. We understand some of these processes to be acceptable, and others to be unjustified, depending on the factors that contribute to the decision. An example should help make things clear. Nathanson discusses speeding tickets in order to highlight some

of our intuitions about when discriminatory punishment is and is not justified. He explains:

Though we may acknowledge the impossibility of ticketing all speeding drivers and still favor ticketing some, we will not find every way of determining which speeders are ticketed equally just. Consider the policy of ticketing only those who travel at extremely high speeds, as opposed to that of ticketing every tenth car. Compare these with the policy of giving tickets only to speeders with beards and long hair or to speeders whose cars bear bumper stickers expressing unpopular political views.⁵⁴

Clearly, these different selection processes are not all equally just or acceptable. Thus, even though there is some plausibility to van den Haag's non-comparative conception of justice, his claim that "discrimination is irrelevant to the moral question", is simply false. Once we understand the variety of circumstances in which discrimination is unjustified, we realize that legally irrelevant factors like race should play no role in judgments about guilt. Nathanson suggests that we could search for alternative types of sanctions if we discover that law enforcement is discriminatory in order to avoid committing the most serious injustices. Because his discussion focuses on discrimination among candidates for capital offenses, simply abolishing punishment to avoid discrimination does not seem a plausible response to serious crimes, given the need to protect the lives of citizens. In the case of punishing drug use, however, there appear to be no good reasons to punish them in the first place. Discriminatory law enforcement then makes the practice of

punishing these activities even more unjust. This provides an additional argument not to punish drug use that is separate from the retributivist view.

Now it is important to address the prevalence of wrongful forms of racial discrimination in the legal process. Many Americans are quick to assess policies as impartial, and oftentimes faith in the criminal justice system dulls a critical perspective. In general, unless a law contains explicitly discriminatory content—something that is overtly racist—many people tend to think it is free from biases because they have not experienced its discriminatory effect in their lives. This tendency completely disregards the potential for subconscious bias and allows silent prejudice to permeate through our criminal justice system. Sociologist Michael Tonry, in his book *Punishing Race*, explains how extreme racial disparities continue to be tolerated due to the influence of widespread stereotypes about black criminality. Specifically, he speaks about anti-black attitudes, attitudes about punishment, and implicit bias. Consider the following information:

People who support punitive crime policies are especially likely to harbor anti-Black attitudes and resentments, and those policies do disproportionate damage to black people... [Americans] assume that blacks with a dark skin tone are more likely to be criminals than blacks with a moderate or light skin tone... Blacks with Afrocentric features [dark skin, wide nose, full lips] are punished more severely than typical whites.... The Implicit Association Test, [a test which] encompasses a number of questionnaires and computer games that seek out unconscious associations of race with good and bad things,

[shows that] every population group except blacks unconsciously associates blacks with criminality.⁵⁵

It would be naive to think legislators, judges, jurors, prosecutors, and police officers can all avoid these pervasive biases. Inevitably, implicit bias contributes to the construction of systematic racism, and conversely the enforcement of discriminatory policies exacerbates the same bias. Nonetheless, many white Americans have a propensity to validate their prejudices rather than question them, looking to blame the stigmatized groups for their own situation—offering no sympathy. Widespread stereotypes about black criminality are thought to derive from legitimate differences in offense rates. This belief, however, is simply at odds with the science. In his third chapter, Tonry gives us the facts⁵⁶:

- Blacks do not use drugs at higher rates than whites
- Blacks do not sell drugs more often than whites
- Police arrest blacks for drug dealing much more often than they arrest whites
- Black drug arrestees are more likely than whites to be convicted and imprisoned

Tonry's findings are impressive and depend upon a vast amount of research including national surveys carried out by the federal government tracking self-reported drug use since the 1970's. In general, his claims are revealing and are approved and well supported in his field.

The War on Drugs is the single greatest contributor to American mass incarceration, and is consequently responsible for the drastic difference in drug arrests, convictions, and imprisonment among minorities. A policy that allows for

harmful prejudices to flourish, that works to marginalize the outnumbered, and that has a racially disproportionate effect of such incredible magnitude, is unjustified. For the past two decades imprisonment rates for blacks have been 5 to 7 times those of whites, despite the two groups having nearly identical offense patterns.⁵⁷ Essentially American drug policy is set up as follows: for every white person punished, there are 5 black persons punished. Discrimination of this type and to this degree is intolerable.

As should be expected, the current situation has fueled some serious backlash and though little change has occurred, some opposing voices are finally being heard. Michelle Alexander, in her book *The New Jim Crow*, forcefully argues for a theory that can be encapsulated in less than ten words: *The War on Drugs is the new Jim Crow*. She takes a historical perspective on racial injustice that focuses on political tendencies and shifts in public consciousness. Her central claim is that these unprecedented levels of incarceration are the newest design of a racial caste. Often criticized for being too speculative, she is seen by her opponents as an untamed radical. Most people would rather avoid the idea of a racial caste altogether, seeing it to be an outdated social phenomenon in America. Regardless, whether or not we agree with her at first glance, if we engage with Alexander's text, she proves to express some incredibly powerful ideas. The following passage describes a pattern in the public conscience:

Few find it surprising that Jim Crow arose following the collapse of slavery. Described in history as regrettable but predictable, given the virulent racism that gripped the south and the political dynamics of

the time. What is remarkable is that hardly anyone seems to imagine that similar political dynamics may have produced another caste system in the years following the collapse of Jim Crow.⁵⁸

Hindsight is revealing. The potential for injustice is often underestimated, and a critical stance is often abandoned. Many Americans consistently assume the current state of affairs is justified because it is the product of earlier changes they agree with—eliminating the prospect for continued modification and improvement. The fact that The War on Drugs remains in full force today speaks nothing to its justification, but rather speaks to American's unwillingness to identify and solve serious forms of injustice suffered by our fellow citizens.

Again, it is important to remember that this discussion, for the purpose of focusing on discrimination, has set aside the question of whether there are good reasons that justify current drug laws. Thus, we see that even without considering whether punishment is a fair response to drug use, our policy as it stands remains gravely unjust because of its discriminatory implementation and racially disproportionate effect. This injustice is only intensified when we realize we have no grounds to be punishing drug use and drug sale in the first place. Not only is the intention of our policy unjustified, but also our method of implementation is biased and unequal. American history, stubbornness, thoughtlessness, prejudice and racism have allowed The War on Drugs to endure, while critical thinking and the demands of justice have been neglected.

References

⁵⁰ Nathanson, Stephen. 152

⁵¹ van den Haag, Ernest. 204

⁵² Tonry, Michael H. 67

⁵³ Nathanson, Stephen. "Does It Matter If the Death Penalty Is Arbitrarily Administered?". *Philosophy & Public Affairs* 14.2 (1985): 149–164.

⁵⁴ Nathanson, Stephen. 153

⁵⁵ This information is available in the First Chapter of Michael Tonry's book *Punishing Race*, under the section "Social Psychology of Race and Crime".

⁵⁶ These facts are the product of careful research and statistical analysis. For a more comprehensive a view of the information, I suggest taking at Tonry's book, *Punishing Race: A Continuing American Dilemma* .The information is available in pages 59-74. His statistical analysis is dense but worthwhile. Diving into the complexities of statistical analysis does us no good in this context—we only need the facts.

⁵⁷ This information is presented in Tonry's third chapter.

⁵⁸ Alexander, Michelle. Chapter 1

Chapter 5: Legalization

A criticism of the status quo would be incomplete without a proposal of some sort. At the beginning of this project, my intention was to propose a theory for the decriminalization of drug use, but after more exposure to the literature, I (along with many scholars in the field)⁵⁹ believe legalization is the most sensible solution. Thus far, I have explained the social damage created by The War on Drugs and defended a view about the justification of punishment that combines both retributivist and consequentialist concerns—focusing both on the deserving aspect of punishment and its potential consequences. I have showed that the legal punishment for drug users cannot be justified because drug users do not deserve criminal punishment, and that the unequal enforcement of drug laws that target minority groups are a further source of injustice. In this final chapter, I will make some policy recommendations that could help solve some of our biggest issues. These recommendations go beyond the decriminalization of drug use and favor the legalization of production and sale of currently illegal drugs.

The terms legalization and decriminalization are often used interchangeably and there is some confusion in their distinction. Here, I intend decriminalization to mean *the use of drugs should not be a criminal offense*. Decriminalization leaves drug sellers and drug producers of newly decriminalized drugs at risk for punishment. The issues of drug production and sale are essentially left aside. Legalization is intended to mean *the use, production, and sale of drugs is not a criminal offense*. In arguing for the legalization of drugs, I am proposing that our federal and state governments regulate currently illicit drugs, similar as we do with alcohol and

tobacco. Our current policies do not seem to be based on serious consideration of empirical research about the drugs, their effects on their users, and which policies and programs have been proven most effective in other societies. The War on Drugs is ridden with prejudice and misconception, and so naturally prevents rational change. When the effects of drugs are understood, when people realize addiction is an illness, the social harms that stem from prohibition are discovered, and the injustice inherent in punishing drug users is recognized— then the atrocity of our current situation is realized. Decriminalization is a step in the right direction, but being only a partial solution, it will not remedy many existing harms. A plan that only addresses part of the problem has a huge potential for failure, and so may lead us to take a half step forward, but then a few steps backwards. If we endorse a partial solution and it fails, prohibitionists will claim they had the right answer all along, and drug users, drug sellers, and drug producers will continue to face harsh punishment with the prospects for change decreasing evermore. We cannot risk moving in the wrong direction any longer, if we are to change, it needs to be done properly. Drug legalization is the most promising solution to the drug-related issues that plague our society.

The primary concern against legalizing drugs is its potential impact on drug use and drug abuse. The worry is that drug legalization sends the wrong message and fundamentally undermines the deterrent effects of drug prohibition. That is, if we want to avoid an increase in drug dependency and experimentation, then we will continue to punish drug users, regardless of the social expense. As we have seen, although the worry is legitimate, the approach is seriously inhumane and is simply

inconsistent with what many well-designed scientific studies suggest. A vast amount of research shows this idea to be unfounded, and it appears then, that our refusal to change is more a result of stubbornness and vengeance, than rational thinking. A few notable public figures have voiced their attitudes towards drug violators, which express their extreme sensitivity to drug related issues but also reveal some glaring ignorance and barbarity that exists in the public sector. Nancy Reagan went on record saying, "The casual drug user cannot morally escape responsibility for the actions of drug traffickers and dealers. I am saying that if you are a casual drug user, you are an accomplice to murder."⁶⁰ This is a strange view of responsibility that does not seem consistent with the way that legal responsibility is assigned in other areas. On September 5, 1990 Los Angeles police chief Darryl Gates testified before the senate Judiciary committee that casual drug users "ought to be taken out and shot".⁶¹ In November 1999, at a literary luncheon in Brisbane, Australia "Judge Judy" suggested that instead of attempting to control AIDS and hepatitis by providing clean needles to drug addicts, we should "give them all dirty needles and let them die".⁶² This hatred for drug violators appears dramatically disproportionate to their crimes. A casual drug user is an accomplice to murder? We ought to take out and shoot the third of our high school seniors who use illicit drugs?⁶³ This is complete nonsense. The War on Drugs provides people an outlet to freely condemn drug users—allowing them to say things they otherwise could not about the groups whom they associate with illicit drugs: young black males, non-white Hispanic males, and rebellious youth. In addition, there is a clear hypocrisy with these sentiments. A number of politicians and Supreme Court judges have admitted to

using illicit drugs, including: Bill Clinton, Al Gore, Newt Gingrich, and Clarence Thomas. George W Bush has refused to state whether he has ever used illegal drugs and Barack Obama has acknowledged using cocaine and marijuana.⁶⁴ There is an apparent inconsistency in many American's attitudes about drug users. We condemn drug users who confirm our prejudices, but choose to overlook those drug users who avoid them. It is time for new voices to emerge that speak honestly about the realities of drug use. Voices that avoid racism and prejudice, that are merciful and understanding, that express critical thinking and awareness, that embrace pragmatism rather than extremism, and that advocate for the legalization of drugs.

Legalization offers emancipation for the millions of drug offenders who are in prison today that do not deserve to be there. There is nothing inherently wrong about drug use. Its potential harms (moral degradation, irresponsibility, laziness, etc.) are harms already considered to be outside the realm of justified state punishment. We don't punish people for being jerks, being poor coworkers, or being bums, so we should also not punish drug users who only have a chance of becoming these things. The most serious victims of drug abuse are the users themselves—thus, they deserve not to be thrown in jail, but to be offered a helping hand. We need to refrain from punishment, and focus on regulation and treatment. From 1980 to 1995, drug law violators accounted for 30 percent of the total increase in the state prison population, and the proportion of offenders in state prisons convicted of drug law violations rose from 6 percent to 23 percent. In federal prisons, drug law violators accounted for 68 percent of the total increase, driving the proportion of drug law violators from 25 percent to 60 percent, making drug law violators by far

the largest group of federal inmates.⁶⁵ We need to get these people out of prison. No other country in the world punishes drug users to the same extent or severity. We are primitive and cruel in our method, and we consequently ruin the lives of millions of innocent Americans. Legalization would drastically reduce our prison population and provide salvation to all those who have fell victim to our current system.

The sharp increase in incarcerations as a result of The War on Drugs has worked to put millions of minorities behind bars at too high a rate, thus preserving and perpetuating racial inequality in America. One in three black men are likely to be incarcerated at some point in their life, as opposed to one in seventeen white men.⁶⁶ This disparity is most primarily the cause of increased drug arrests and convictions. Sociologist Michael Tonry suggests the best way to diminish this racial disproportionality in America is by “radically reducing the use of imprisonment”. Drug legalization seems to be the most simple and effective solution to this end, for it would have the largest impact on the black prison population. Tonry notes how if disparity were reduced by 10% (which he admits is hopeful)—by means of modifying our current laws to better avoid prejudice—the total number of black prisoners would only decrease by 101,000. However, if we returned to the imprisonment rates we held in 1980, this number would decrease by 697,000.⁶⁷ Thus, drug legalization would greatly reduce the potential for discriminatory law enforcement, simply because a huge number of minorities would no longer be at risk for punishment. This is a necessary step towards reducing racial inequality in America.

Economically, legalizing drugs would produce a number of benefits. Let us not forget, that keeping a drug offender in prison is nearly four times as expensive as sending him or her to treatment.⁶⁸ In addition, they have potential to be contributing members of society and provide economic stimulation, whereas if they are sent to prison, they are excluded from economic contribution. The flood of arrests and incarceration for violating drug laws costs the taxpayer billions. Reducing this load would lessen the burden on the court and prison systems, allowing them to better deal with real crimes like violence, murder, and theft. In addition, the government could raise tax revenue from formerly illicit drugs, as it now does from tobacco and alcohol. In the United States, the Miron and Waldock report for the Cato Institute estimated potential tax revenues in a post-prohibition world. They found that “drug legalization would yield tax revenue of \$46.7 billion annually, assuming legal drugs were taxed at rates comparable to those on alcohol and tobacco. Approximately \$8.7 billion of this revenue would result from legalization of marijuana and \$38 billion from legalization of other drugs.”⁶⁹ Margins of this size have potential to be enormously beneficial. If the revenue and savings from legalization were funneled into treatment programs drug related issues would be greatly reduced. It is important to note that decriminalization would not allow for this sort of revenue building, for it prohibits production and sale.

Alternative tactics that are necessarily excluded by The War on Drugs have shown to be incredibly helpful in reducing drug abuse and making drug use safer. Drug maintenance—a practice in which addicts are prescribed drugs to maintain,

but control, their habits—has proven to be successful in regulating drug use and reducing drug dependency. Researcher Arthur Benavie informs:

In the 1960s United States researchers Vincent Dole and Marie Nyswander were obtaining favorable results administering oral doses of methadone to heroin addicts at the Rockefeller institute in New York. Patients given methadone withdrew from heroine, worked more, committed less crime, and stayed in treatment longer... [These findings] have been corroborated by numerous scientific studies. As the historian of opiate addiction David Courtwright concluded, "Methadone was to [opiate] addiction what insulin was to diabetes, a medically appropriate answer to a genuine disease."⁷⁰

Another good example is Switzerland's heroin maintenance program. In twelve years (1990-2012), the number of new heroin users fell 82 percent, while the overall population was down 4 percent⁷¹. The War on Drugs rejects these methods, and so instead of treating drug addicts like we do those who suffer from other illnesses, we punish them as if they bear no similarity to us. Consequently, instead of reducing drug abuse and crime, we perpetuate it. Legalization would provide a plethora of treatment options that do not exist today. Admittedly, an entire market exists with the specific goal of helping alcohol and tobacco addicts. We have seen a substantial reduction in tobacco use over the last 30 years and it is not because the drug became illegal.⁷²

Drug criminalization allows organized crime to control the illegal drug industry. Arguably the most certain positive change legalization would bring is a

destruction of the black market. Outlawing a product that consumers demand inevitably creates an underground market. Thus, we allow the people we consider most dangerous (gangsters and organized crime leaders), to be in charge of regulating and distributing the substances we find most dangerous. Legalizing drugs would greatly reduce the prices of currently illicit substances such that the black market would no longer be able to compete. It is estimated that cocaine and heroin would be available at 10 to 15 percent of their black market price if they were legal today.⁷³ Most of the violence associated with narcotic drug use results from the business of supplying, dealing, and acquiring the substances. Research found that drug related homicides have been overwhelmingly caused by the Drug War, mainly turf battles between drug cartels.⁷⁴ Additionally, higher drug prices appear to be correlated with increased crime—cocaine and heroin are so expensive that addicts will resort to property crime to feed their habit. Statistical research finds that when the prices of meth and heroin go up, so does property crime.⁷⁵

The black market creates an incredibly dangerous environment for drug users not only because it cultivates violent behavior, but also because users lack essential information about the substances they are ingesting (e.g. potential harms, appropriate dosages, purity, and possible side effects). Without a test kit of some sort, it is impossible to tell the purity of the substance being administered, and black market substances almost inevitably contain adulterants for the purpose of bulking or diluting the drug (and hence adding to the profits to be made). Toxicologist John Ramsay described some of the substances regularly used to adulterate cocaine⁷⁶:

- Benzocaine: a local anesthetic

- Caffeine
- Triacetin: a headache reliever affecting the kidney and liver
- Lactose, glucose: sugars
- Creatine: a supplement used by body builders

This makes for an incredibly dangerous situation, users have no idea what they are ingesting, and are completely unaware of drug purity. Imagine taking Tylenol and not knowing if the dosage were 100mg or 1000mg, or if it had been mixed with aspirin, Advil, or caffeine. Undeniably, alcohol would be an enormously more dangerous drug if we were unable to know whether we were consuming a drink of 5 percent or 50 percent.

Furthermore, there is potential for the user to be sold an entirely different substance altogether. There is a purposeful and continuous development of new “designer drugs” that allow dealers to stay one step ahead of the law. These newly created substances are produced for means of foiling prohibition, that is, as soon as a substance is banned, a chemical equivalent is produced in its place in order to satisfy the demand while circumventing the law. Most of these drugs are stand-ins for popular illicit substances like marijuana, LSD, mushrooms, and ecstasy, and are often times sold as such. The issue is we have incredibly limited information about these new substances, and they can have drastically different consequences than the drugs they are intended to substitute. Marijuana, LSD, and mushrooms are all known to be non-lethal, however, their synthetic alternates often are. For example, 25C-NBOMe is sold online as “Legal LSD” and is often sold in place of LSD during street deals. There has never been a reported fatality from LSD use, 25C-NBOMe,

however, presents high risks of overdose, acute toxicity, and multiple fatalities have been reported.⁷⁷ Naturally, this creates an incredible risk for potential LSD users, having the possibility of ingesting a potentially fatal substance in place of a drug known to be non-lethal. Legalization would rid drug use from these apparent dangers, allowing for control and regulation of substances such that potential users would be aware of the risk and have access to necessary information. It is ludicrous that America has allowed a drug environment of such extreme danger to fester and grow.

The case for legalization is strong. From nearly every standpoint it appears to be the most justified and sensible solution to the status quo. A strong case, however, is not enough to instill change—drug legalization requires a fundamental shift in American consciousness. Paula Mallea explains:

It is essential that we stop considering drug users as “the other”.

When we set up this kind of dichotomy, it becomes easy to justify harsh treatment of people whom we consider to be lesser. Yet far from being the demented, dangerous, individuals that we seem to fear, drug users are our friends, neighbors, and family members. It behooves us to treat them as we would want to be treated—with care, respect, and compassion.⁷⁸

Treating drug users like second-class citizens is cruel and unfair. Americans reject the realities of drug use and endorse an intense moralism that serves to unjustly stigmatize an innocent group of people. Doctor and researcher Andrew Weil talks about the natural human drive to experiment with ways of changing consciousness.

He calls it the “fourth drive”—a drive almost as fundamental to human nature as hunger, thirst, or sex. He explains:

The omnipresence of the [drug] phenomenon argues that we are dealing not with something socially or culturally based, but rather with a biological characteristic of the species... [Evidence of the urge to alter consciousness] is shown at very young ages. Three- and four-year-olds, for example, commonly whirl themselves into vertiginous stupors.⁷⁹

Understanding the extent to which drug experimentation is connected to human nature may help lend some sympathy and acceptance. It may not prove drug experimentation as being not wrong, but it should help illuminate the reality of the situation. Nearly every human being ingests some type of mood-altering chemical—be it alcohol, nicotine, caffeine, marijuana, or any host of prescription drugs used to relieve pain and alleviate anxiety, depression, or insomnia. It is inconsistent and unfair to condemn those who use illicit drugs with this in mind. We need to stop painting drug users as monsters, and start viewing them for what they are—people.

Legalization would provide emancipation for the millions of innocent Americans behind bars today. It would drastically reduce racial inequality, collapse the black market, provide an enormous new revenue stream, greatly reduce both violent and property crime, greatly reduce the danger in consuming currently illicit substances, and ensure accurate information about drugs is available to users. It is the most outstanding and obvious solution to drug-related problems in America. Decriminalization, though a step in the right direction, preserves too much harm

that stems from prohibition. The current state of affairs is embarrassing and unjustified. We need to do everything in our power to seek change, and realize that we exist in a time of brutal unfairness and inequality, where we ruin the lives of innocent people at unlimited social and moral expense.

References

- ⁵⁹ A similar comment is made in the introduction. See *Footnote 1*.
- ⁶⁰ Benavie, Arthur. 13
- ⁶¹ Benavie, Arthur. 13
- ⁶² Benavie, Arthur. 13
- ⁶³ It is estimated that around one third of American twelfth graders have tried marijuana. This information is given in the introduction of *Drugs: America's Holy War*
- ⁶⁴ This is mentioned in a Footnote at the end of Huemer's paper. *America's Unjust Drug War*, 236
- ⁶⁵ Columbia University. National Center on Addiction, and Substance Abuse. 6
- ⁶⁶ Pettit, Becky, and Bruce Western. 152-169.
- ⁶⁷ Tonry, Michael H. *Punishing Race: A Continuing American Dilemma*. New York: Oxford UP, 2011. 151
- ⁶⁸ Mallea, Paula. 120
- ⁶⁹ Mallea, Paula. 34
- ⁷⁰ Benavie, Arthur. 119
- ⁷¹ Benavie, Arthur. 120
- ⁷² Benavie, Arthur. 5
- ⁷³ See *Endnote 26*
- ⁷⁴ Benavie, Arthur. 36
- ⁷⁵ Benavie, Arthur. 41
- ⁷⁶ Mallea, Paula. 72
- ⁷⁷ Francesco Saverio Bersani, Ornella Corazza, Gabriella Albano. 1
- ⁷⁸ Mallea, Paula. 204
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